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Paper No. 3

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SEP 22 2000

In re Application of
James Crow, et al.
Application No. 09/542,602
Filed: April 4, 2000
Attorney Docket No.044577.0015

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DECISION DISMISsing
PETITION

This is in response to the petition filed May 8, 2000, requesting correction of the filing date for the above-identified application, which is treated as a petition under 37 CFR § 1.10.

Petitioners allege that the above-identified application is entitled to a filing date of April 3, 2000, rather than the presently accorded filing date of April 4, 2000. In support of the petition, petitioners have submitted a copy of the returned date-stamped postcard receipt indicating the correspondence filed and received in the Patent and Trademark Office on April 4, 2000; a copy of Express Mail Label No. EJ755756076US indicating a "date-in" date of April 4, 2000; and an Affidavit from Terri Munoz, indicating that the correspondence was deposited in an Express Mail receptacle at approximately 6:05 p.m. and the last pick-up time for that receptacle is posted as 7:00 p.m. Ms. Munoz also indicated in her affidavit that several days later, after receiving the filing receipt, she was told by Post Office personnel that "perhaps circumstances beyond their control prevented [the] package from receiving the correct deposit date".

In accordance with 37 CFR § 1.10(a), correspondence received by the Patent and Trademark Office and delivered by USPS Express Mail Service, is considered as filed on the date of deposit in USPS Express Mail Service. The date of deposit is determined by the "date-in" date on the Express Mail mailing label or other official USPS notation.

37 CFR 1.10(d) applies where correspondence is deposited with the USPS and received by the Patent and Trademark Office and it is asserted that the "date-in" date on the US Express Mail Mailing label was incorrectly entered or omitted. A grantable petition under 37 CFR 1.10(d) requires:

(1) that the petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) the number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) the petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph **must** be corroborated by evidence from the USPS or that came into being after deposit and

within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The instant petition lacks item (3) set forth above. The petitioner has not made an adequate showing that the requested filing date is the date the correspondence was deposited in the Express Mail service. An adequate showing must be corroborated by evidence from the USPS, or that came into being within one business day of the deposit of the correspondence in Express Mail service. The Affidavit of Terri Munson is insufficient because it is not corroborated by evidence from the USPS and it did not come into being within one business day of the deposit of the correspondence in the Express mail service.

Petitioners are reminded that according to 37 CFR 1.10(b), correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the Express Mail receipt with the correct "date-in" clearly marked, and that persons dealing indirectly with the USPS by using an Express Mail drop box do so at their own risk. See also MPEP § 513.

Under the circumstances, petitioners are advised to submit some evidence which came into being after deposit and within one business day of the deposit of the correspondence, such as copies of the firm's Express mail log, courier records or receipts, receipts or corporate account statements, from the postal service which can be used to positively establish the date the correspondence was deposited in the Express Mail service. Petitioners are advised to consult § 513 of the MPEP for evidence which is considered to provide an adequate showing as required.

The petition is dismissed.

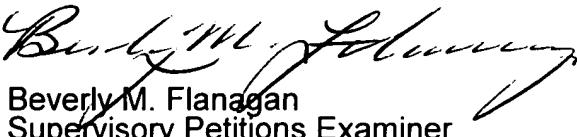
Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (See 37 CFR 1.181(f)) and should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries may be directed to Petitions Attorney, Jennifer M. Hayes, at (703) 306-5608, or if unavailable, to the undersigned at (703) 305-9285.


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for Patent Policy and Projects